

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SERGIO L. RAMIREZ, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

TRANS UNION, LLC,

Defendant.

Case No. 12 cv-00632-JSC

Class Action

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION IN LIMINE
NO. 5**

THIS MATTER having been brought before this Court on Plaintiff's Motion In Limine No. 5 To Preclude Defendant Trans Union, LLC From Offering Evidence Or Argument Regarding The Practice Of Plaintiff's Counsel, and the Court having read all papers, and for good cause shown,

IT IS on this _____ day of _____, 2017, **ORDERED** that Plaintiff's Motion In Limine No. 5 is **GRANTED**. Defendant Trans Union, LLC is precluded from introducing any evidence at trial through any witness or exhibit concerning the law practice of Plaintiff's counsel.

IT IS SO ORDERED.

Dated: _____

JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE

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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

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 and all others similarly situated,

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v.

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**PLAINTIFF'S MOTION IN LIMINE
 NO. 5 TO PRECLUDE DEFENDANT
 TRANS UNION, LLC FROM
 OFFERING EVIDENCE OR
 ARGUMENT REGARDING THE
 PRACTICE OF PLAINTIFF'S
 COUNSEL**

PLAINTIFF'S MOTION IN LIMINE NO. 5 TO PRECLUDE DEFENDANT TRANS UNION, LLC FROM
 OFFERING EVIDENCE OR ARGUMENTS REGARDING THE PRACTICE OF PLAINTIFF'S COUNSEL

1
2 Plaintiff Sergio L. Ramirez and the Certified Class, through undersigned counsel, hereby
3 move to preclude Defendant Trans Union, LLC from introducing any evidence or argument
4 concerning the law practices of any of Plaintiff's counsel.

5 I. BACKGROUND

6 All of Plaintiff's counsel have long-standing practices in consumer protection litigation.
7 They have brought multiple individual and class action lawsuits pursuant to the Fair Credit
8 Reporting Act (FCRA), including multiple such lawsuits against Defendant regarding its OFAC-
9 related products. *See, e.g., Cortez v. Trans Union, LLC*, 617 F.3d 688 (3d Cir. 2010) (plaintiff's
10 counsel prosecuted the *Cortez* through trial at the district level and on appeal); *Larson v. Trans*
11 *Union, LLC*, 201 F. Supp. 3d 1103 (N.D. Cal. 2016) (granting motion to certify class); *Patel v.*
12 *Trans Union, LLC*, 308 F.R.D. 292 (N.D. Cal. 2015) (granting motion to certify class); *Miller v.*
13 *Trans Union, LLC*, No. 3:12-CV-1715, 2017 WL 412641 (M.D. Pa. Jan. 18, 2017) (report and
14 recommendation of magistrate judge that plaintiff had Article III standing and that motion for
15 class certification should be granted). Present defense counsel have defended some of those
16 actions. Defendant has indicated in its 10-k statement to the Securities and Exchange
17 Commission that its OFAC litigation is primarily against one group of lawyers.

18 II. ARGUMENT

19 Irrelevant evidence is inadmissible. Fed. R. Evid. 402. Even relevant evidence can be
20 excluded if it is more prejudicial than probative. *See* Fed. R. Evid. 403. The Court has "wide
21 discretion" in making Rule 403 decisions but must exclude evidence of slight probative value
22 if there is a modest likelihood that the evidence would cause unfair prejudice or mislead the
23 jury. *United States v. Hitt*, 981 F.2d 422, 424 (9th Cir. 1992).

24 Defendant should not be allowed to offer evidence or make arguments whatsoever
25 concerning the law practice of Plaintiff's counsel, either in general or against Trans Union in
26

particular. This case is about Mr. Ramirez and the certified class on the one hand and Trans Union on the other. Evidence or argument about the lawyers (on both sides) and their professional history in similar litigation is simply irrelevant.

Such necessarily personal or character evidence and argument would not only be irrelevant to the merits of this matter, but could unnecessarily prejudice the jury. *See Ginny v. White*, No. CV-N-95-0279-DWH, 2003 WL 23353600, at *16 (D. Nev. Dec. 30, 2003) (it is “uncontroversial . . . that improper comments that may prejudice the jury against an opposing party or counsel constitute prejudicial misconduct”). *See also, Whitehead v. Food Max of Miss., Inc.*, 163 F.3d 265, 276-77 (5th Cir. 1998) (references to an out-of-state corporation's failure to show up in court and defend itself, having chosen to send a pleasant lawyer in its stead were inflammatory and prejudicial). This case should be tried on the merits, and any reference to the law practice of counsel is unnecessary and irrelevant at best, and potentially prejudicial at worst. It should be excluded from trial in this matter.

This exclusion, however, should be limited to the practice of Plaintiff's counsel – *i.e.*, which lawyers represented which consumers in certain litigation. The *litigation itself* should *not* be excluded. *Cortez v. Trans Union* obviously forms an important backdrop to this lawsuit, and it is referenced by several Trans Union's witnesses and by experts on both sides. That case and others, where relevant, should not be excluded. But which lawyers represented Sandra Cortez and other consumers in litigation is simply irrelevant.

III. CONCLUSION

For the above reasons, Plaintiff's Motion in Limine No. 5 should be granted.

Dated: April 27, 2017

Respectfully Submitted,

FRANCIS & MAILMAN, P.C.

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) Case No. 3:12-cv-00632-JSC

)
) Assigned to the Honorable Jacqueline Scott
) Corley

) **DEFENDANT TRANS UNION LLC'S**
) **OPPOSITION TO PLAINTIFF'S MOTION**
) **IN LIMINE NO. 5 TO PRECLUDE**
) **DEFENDANT TRANS UNION, LLC**
) **FROM OFFERING EVIDENCE OR**
) **ARGUMENT REGARDING THE**
) **PRACTICE OF PLAINTIFF'S COUNSEL**

I. INTRODUCTION AND BACKGROUND

By his Motion *in Limine* No. 5 (“MIL No. 5”), Plaintiff seeks to preclude TransUnion from introducing any evidence or argument concerning the law practices of Plaintiff’s counsel. Although it is not clear precisely what Plaintiff has in mind with respect to MIL No. 5, the Motion should be denied. Specifically, TransUnion should be allowed to present evidence and argument that no consumers other than Plaintiff have sued over the alleged name mismatch challenged here, nor have any other consumers joined this long-running lawsuit, in spite of Plaintiff’s counsel’s widespread publication of the suit and their advertising attempts to seek additional plaintiffs. (See Dkt. Nos. 51, 59, 67 and 77.) That no one appears to have come forward, in spite of Plaintiff’s counsel’s diligent attempts to beat the bushes in hopes that someone injured emerges, tends to prove that the violations asserted in this litigation caused no harm to the general public or to any members of the class. Because, among other things, Plaintiff must prove that TransUnion created a significant risk of harm, see Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47 (2007), this evidence of lack of harm is relevant to undermine Plaintiff’s theory of liability.

Further, to the extent Plaintiff’s counsel seek to introduce evidence of their own involvement in the Cortez litigation, in an effort to elevate their personal status with the jury, they will open the door to any potential evidence that will contradict any implied claim that they are heroes of the common man. TransUnion’s position is that none of this material is admissible, but if it is admitted, TransUnion should be permitted to defend thoroughly.

II. ARGUMENT

A. TransUnion Is Entitled To Present Evidence And Argument Regarding Plaintiff’s Counsel’s Efforts To Publicize This Suit.

On November 23, 2012, Anderson, Ogilvie & Brewer, LLC, co-counsel for Plaintiff, published on its website an article soliciting potential clients entitled “Credit Reports Tag Consumers As Drug Dealers Or Terrorists” (the “Solicitation”). The Solicitation purports to report on TransUnion’s alleged practice of tagging or identifying consumers as actual terrorists and drug dealers and refusing to allow consumers to dispute information communication by TransUnion

1 relating to a list maintained by the United States Treasury Department's Office of Foreign Assets
2 Control ("OFAC"). The Solicitation expressly discusses the instant action.

3 On December 6, 2012, an article written by Kelly Dilworth entitled "Credit Reports Falsely
4 Tag Consumers As Terrorists, Drug Traffickers," clearly based in large part on the Solicitation,
5 appeared on the website www.CreditCards.com. The Article subsequently was published on
6 numerous major news media websites, including Yahoo! Finance and Fox Business. The Article,
7 like the Solicitation on which it is based, purports to report on TransUnion's alleged practice of
8 tagging or identifying consumers as actual terrorists and drug dealers and refusing to allow
9 consumers to dispute the OFAC information. The Article expressly discusses the instant action.

10 Notwithstanding Plaintiff's counsel's widespread efforts to publicize this suit, no
11 consumers other than Plaintiff have sued over Plaintiff's allegations here or joined this lawsuit,
12 which has been pending for over five years. TransUnion is entitled to present evidence and
13 argument as to this fact.

14 Finally, TransUnion notes that Plaintiff's proposed trial exhibits include a host of materials
15 from the Cortez litigation, including the Third Circuit opinion, the Cortez credit report, file
16 disclosure and verdict sheet. All of these constitute hearsay and would be unfairly prejudicial,
17 confusing and would mislead the jury. See Fed. R. Evid. 403, 802, 803; see also Old Chief v.
18 United States, 519 U.S. 172, 180-92 (1997); Hamling v. United States, 418 U.S. 87, 124-27 (1974)
19 (trial court did not abuse its discretion by excluding evidence on the basis that it was largely
20 irrelevant, and to the extent it was relevant, it was confusing to the jury); United States v. Wiggan,
21 700 F.3d 1204, 1215 (9th Cir. 2004) (district court abused its discretion when it admitted testimony
22 where "the danger of undue and unfair prejudice far outweighed the probative value of the
23 evidence"). Indeed, the 70-page Cortez decision and verdict sheet will confuse and no doubt
24 inflame the jury with materials they cannot put in context or understand. The identification of such
25 irrelevant items reveals Plaintiff's trial strategy to improperly use Cortez as a springboard, and to
26 paint his lawyers as heroes or particularly expert in this area of the law. This would be improper
27 and highly prejudicial to TransUnion. To the extent this information is admitted, TransUnion
28

1 should be permitted to use whatever evidence is available to rebut any suggestion that Plaintiff's
2 counsel are entitled to special reverence based on their prior litigation activity.

3 **III. CONCLUSION**

4 For the foregoing reasons, TransUnion respectfully requests that the Court deny Plaintiff's
5 Motion in Limine No. 5.

6
7 Dated: May 9, 2017

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